

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 9, 2004 Session

**GREGORY DAVID BRYANT-BRUCE, JR. ET AL. v.  
STATE OF TENNESSEE**

**Appeal from the Tennessee Claims Commission  
No. 96000863 William Baker, Commissioner**

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**No. M2002-03059-COA-R3-CV - Filed September 27, 2005**

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This appeal involves a dispute between the State of Tennessee and the parents of a profoundly ill infant regarding the State's responsibility for the medical care the child received while in the State's custody. After regaining custody of their child, the parents filed a claim in the Tennessee Claims Commission against the Tennessee Department of Human Services and certain of its employees, alleging, among other things, that the Department and its employees had negligently failed to investigate the causes of the child's medical condition and had negligently failed to ensure that the child received proper medical care while he was in foster care. After the Commission dismissed the claim in its entirety, the child's mother perfected this appeal on behalf of her son. She raises only one issue – whether the Commission erred by holding that the doctrine of quasi-judicial immunity barred her claim that the Department and its employees negligently failed to supervise the medical care her child received while he was in foster care. Even though we have determined that the Commission misapplied the doctrine of quasi-judicial immunity in this case, we have concluded, based on the undisputed facts, that the Department was entitled to dismissal of the parents' claim as a matter of law.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Claims Commission Affirmed**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Brian T. Dunn, Los Angeles, California, for the appellants, Gregory David Bryant-Bruce, Sr. and Cheryl Denise Bryant-Bruce.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Martha A. Campbell, Senior Counsel, for the appellee, State of Tennessee.

**OPINION**

**I.**

Gregory David Bryant-Bruce, Jr. was born prematurely on June 10, 1993 at Wright Patterson Air Force Base in Dayton, Ohio. Because of his low birth weight and other complications, the child

remained in pediatric intensive care until he was transferred to Vanderbilt University Medical Center ("VUMC") to evaluate his liver function and to assess the need for a liver transplant. On August 4, 1993, Vanderbilt released the child to his parents, Cheryl Bryant-Bruce, an Army physician stationed at Ft. Campbell, and Gregory David Bryant-Bruce, Sr.

The infant was readmitted to VUMC on September 11, 1993, where he remained for nineteen days. In addition to administering antibiotics and transfusions to treat the child's sepsis, the medical staff diagnosed the child with a bleeding disorder known as Disseminated Intravascular Coagulation and also determined that he was suffering from medical neglect and failure to thrive. They reported their concerns to the Tennessee Department of Human Services as required by law. On September 30, 1993, in response to the Bryant-Bruces' requests, VUMC transferred the child to Blanchfield Army Community Hospital ("Blanchfield") in Ft. Campbell, Kentucky. Blanchfield discharged the child to his parent on October 4, 1993.

The child returned to VUMC on October 23, 1993 with a confirmed diagnosis of Respiratory Syncytial Virus. He was treated and released the following day but was readmitted on October 26, 1993 for several surgical procedures and a liver biopsy. He was later discharged in his parents' custody.

On December 7, 1993 physicians at Blanchfield determined that the child had an abnormally low hematocrit rate and immediately transferred him to VUMC where he was admitted with severe anemia. A physician representing the Vanderbilt Committee on Child Abuse examined the child. After observing intracranial and retinal hemorrhaging, the physician concluded that the child was a victim of Shaken Infant Syndrome. This diagnosis was provided to the Department of Human Services as required by law.

On December 11, 1993, during an interview in the Clarksville office of the Department of Human Services, the Bryant-Bruces denied that they had abused their child and requested the Department to arrange for a "differential diagnosis" of their child. Over the course of the next two days, the Bryant-Bruces provided the Department with literature and other information containing explanations other than child abuse for their son's condition. It was during this period of time that Dr. Bryant-Bruce requested an early discharge from the United States Army to better enable her to care for her child.

On December 23, 1993, while the child remained hospitalized at VUMC, the Department filed a petition in the Montgomery County Juvenile Court seeking temporary custody because of the Shaken Infant Syndrome diagnosis. During a hearing on December 28, 1993, the juvenile court appointed a guardian ad litem for the child and immediately granted the petition. The child remained hospitalized until mid-January 1994. Upon his release, the Department arranged for him to be placed in a foster home in Nashville and permitted the Bryant-Bruces' to have limited visitation.

Following hearings in February and March 1994, the juvenile court entered an order concluding that the child had been subjected to severe child abuse while in the Bryant-Bruces' custody and, therefore, that the child was dependent and neglected. Accordingly, the juvenile court determined that the child should remain in the Department's custody. During subsequent meetings,

the Department's employees told the Bryant-Bruces that they were convinced that the Bryant-Bruces had abused their son and that they had no intention of attempting to reunite the child with his parents.

The Bryant-Bruces appealed the juvenile court's dependent and neglect findings to the Circuit Court for Montgomery County. In June 1994, they moved to Atlanta, Georgia. Following their move, the Bryant-Bruces requested that the legal proceedings be transferred to a Georgia court and that their son be examined at Emory University's Egleston Children's Hospital ("Egleston") in Atlanta. The Department denied both requests. Following hearings in July and August 1994, the Circuit Court for Montgomery County determined that the child was dependent and neglected because of severe child abuse while in the Bryant-Bruces' custody. The trial court also determined that the child should remain in the Department's custody.

The child's condition continued to deteriorate during the fall and early winter. Following a supervised visitation on February 9, 1995, the Bryant-Bruces took their child from his foster parents and brought him to Georgia. Their plan was to obtain a second opinion about the cause of their child's medical condition from the physicians at Egleston. An arrest warrant was immediately issued for Dr. Bryant-Bruce, and she was arrested at her child's bedside at Egleston later the same evening.<sup>1</sup>

The Department instructed the staff at Egleston not to begin diagnostic testing of the Bryant-Bruces' son. However, following intervention by the Dekalb County Superior Court, the Egleston physicians examined the child and determined that he had Alagille's Syndrome, a genetic disease linked to intracranial and retinal hemorrhaging. The Egleston physicians informed VUMC of their diagnosis, and on March 3, 1995, the child was returned to foster care in Nashville.

Thereafter, on May 23, 1995, the Bryant-Bruces moved to modify the circuit court's earlier order granting the Department custody of their child. The circuit court granted the Bryant-Bruces' motion for a new trial based on newly discovered evidence. Following a hearing in June 1995 during which the Bryant-Bruces presented the opinions and conclusions of the Egleston physicians, the circuit court returned custody of the child to the Bryant-Bruces and terminated the Department's further involvement with the family. The Department did not appeal from the circuit court's order.

On May 16, 1996, the Bryant-Bruces filed a claim with the Tennessee Claims Commission seeking to recover \$1,000,000 for their son and themselves. They asserted that the Department and its employees had negligently breached their duty (1) to investigate the causes of their son's physical condition, (2) to ensure that their son received adequate medical care while he was in foster care, and (3) to honor their visitation privileges. They also made claims based on malicious prosecution, abuse of legal process, false imprisonment, defamation of character, outrageous conduct, and loss of consortium.

The Bryant-Bruces also filed a lawsuit in the United States District Court for the Middle District of Tennessee. They asserted essentially the same claims against the Department and its employees. They also asserted similar claims against the foster care organization and parent with

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<sup>1</sup> While Dr. Bryant-Bruce was later arraigned on the charges stemming from the unlawful removal of her son to Atlanta, a grand jury in Davidson County ultimately declined to indict her.

whom their son had been placed and against VUMC and the members of its medical staff who had treated their son. In addition, the Bryant-Bruces asserted a medical negligence claim against VUMC and its staff members.

The Commission stayed consideration of the Bryant-Bruces' claim pending the resolution of the proceeding in the United States District Court. All the defendants in the federal proceeding eventually moved to dismiss the complaint, and VUMC and its staff also moved for a partial summary judgment based on their immunity under Tenn. Code Ann. § 37-1-410(a) (2001).<sup>2</sup> On July 3, 1997, the District Court dismissed all the claims against the Department and its employees, as well as the foster care organization and the foster parent, because the Bryant-Bruces had waived their right to seek judicial relief against these parties by filing an essentially identical claim with the Tennessee Claims Commission. *Bryant-Bruce v. Vanderbilt Univ.*, 974 F. Supp. 1127, 1135-36 (M.D. Tenn. 1997); Tenn. Code Ann. § 9-8-307(b) (Supp. 2004). The District Court granted the summary judgment motion filed by VUMC and its staff based on their immunity under Tenn. Code Ann. § 37-1-410(a), and also granted their motion to dismiss all other claims except for the medical negligence claim. *Bryant-Bruce v. Vanderbilt Univ.*, 974 F. Supp. at 1141, 1142-48.<sup>3</sup>

The proceedings before the Commission revived following the entry of the United States District Court's order. The Department filed an amended motion seeking dismissal of all claims against its individual employees, as well as all claims against the Department except for the claims based on the alleged negligent care that the Bryant-Bruces' child received while in state custody. One of the many bases for the Department's motion was that it was entitled to assert the defenses of quasi-judicial immunity that could have been asserted by its individual employees.

On January 29, 1998, the Commission entered an order dismissing all of the Bryant-Bruces' claims against the employees of the Department. The Commission also dismissed all claims against the Department except for the child's claims for "professional malpractice" and the parents' claims for "professional malpractice" and libel based on acts occurring on or after February 9, 1995 and for slander based on acts occurring on or after August 9, 1995. The Department thereafter filed an answer denying liability and a motion for summary judgment seeking dismissal of the surviving claims. Following a hearing in October 2002, the Commission entered an order granting the Department's motion for summary judgment and dismissing the Bryant-Bruces' claim.

## II.

The standards for reviewing summary judgments on appeal are well settled. Summary judgments are proper in virtually any civil case that can be resolved on the basis of legal issues alone. *Frugé v. Doe*, 952 S.W.2d 408, 410 (Tenn. 1997); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993);

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<sup>2</sup>Tenn. Code Ann. § 37-1-403(a)(1) requires health care providers to report suspected child abuse and neglect. Tenn. Code Ann. § 37-1-410(a) provides that health care providers who comply with Tenn. Code Ann. § 37-1-403(a) will be immune from criminal and civil liability arising from their report of suspected abuse.

<sup>3</sup>The United States District Court eventually granted VUMC's motion for summary judgment dismissing all of the Bryant-Bruces' claims except for a single outrageous conduct claim based on VUMC's failure to provide the child's medical records when Egleston requested them.

*Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). They are not, however, appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. Thus, a summary judgment should be granted only when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion – that the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

The party seeking a summary judgment bears the burden of demonstrating that no genuine dispute of material fact exists and that it is entitled to a judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *Shadrick v. Coker*, 963 S.W.2d 726, 731 (Tenn. 1998). To be entitled to a judgment as a matter of law, the moving party must either affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Byrd v. Hall*, 847 S.W.2d at 215 n.5; *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

Once the moving party demonstrates that it has satisfied Tenn. R. Civ. P. 56's requirements, the non-moving party must demonstrate how these requirements have not been satisfied. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). Mere conclusory generalizations will not suffice. *Cawood v. Davis*, 680 S.W.2d 795, 796-97 (Tenn. Ct. App. 1984). The non-moving party must convince the trial court that there are sufficient factual disputes to warrant a trial (1) by pointing to evidence either overlooked or ignored by the moving party that creates a factual dispute, (2) by rehabilitating evidence challenged by the moving party, (3) by producing additional evidence that creates a material factual dispute, or (4) by submitting an affidavit in accordance with Tenn. R. Civ. P. 56.07 requesting additional time for discovery. *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998); *Byrd v. Hall*, 847 S.W.2d at 215 n.6. A non-moving party that fails to carry its burden faces summary dismissal of the challenged claim because, as our courts have repeatedly observed, the "failure of proof concerning an essential element of the cause of action necessarily renders all other facts immaterial." *Alexander v. Memphis Individual Practice Ass'n*, 870 S.W.2d 278, 280 (Tenn. 1993).

A summary judgment is not appropriate when a case's determinative facts are in dispute. However, for a question of fact to exist, reasonable minds must be able to differ over whether some alleged occurrence or event did or did not happen. *Conatser v. Clarksville Coca-Cola Bottling Co.*, 920 S.W.2d 646, 647 (Tenn. 1995); *Harrison v. Southern Ry. Co.*, 31 Tenn. App. 377, 387, 215 S.W.2d 31, 35 (1948). If reasonable minds could justifiably reach different conclusions based on the evidence at hand, then a genuine question of fact exists. *Louis Dreyfus Corp. v. Austin Co.*, 868 S.W.2d 649, 656 (Tenn. Ct. App. 1993). If, on the other hand, the evidence and the inferences reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion, then there are no material factual disputes, and the question can be disposed of as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d at 695; *Seavers v. Methodist Med. Ctr.*, 9 S.W.3d 86, 91 (Tenn. 1999); *Beaudreau v. Gen. Motors Acceptance Corp.*, 118 S.W.3d 700, 703 (Tenn. Ct. App. 2003).

Summary judgments enjoy no presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003); *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 285 (Tenn. 2001). Accordingly, appellate courts must make a fresh determination

that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We must consider the evidence in the light most favorable to the non-moving party, and we must resolve all inferences in the non-moving party's favor. *Godfrey v. Ruiz*, 90 S.W.3d at 695; *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001). When reviewing the evidence, we must determine first whether factual disputes exist. If a factual dispute exists, we must then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d at 214; *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

### III.

The Bryant-Bruces' sole issue on this appeal involves the Commission's application of the doctrine of quasi-judicial immunity. They assert that the Commission erred by holding that the doctrine shielded the Department from liability under Tenn. Code Ann. § 9-8-307(a)(1)(E) for its employees monitoring of the medical care their child received from VUMC while he was in the Department's custody. We have determined that the Commission has misapplied the doctrine of quasi-judicial immunity.

#### A.

The Department asserted both in its motion to dismiss and in its motion for summary judgment that it and its employees were entitled to quasi-judicial immunity for all their actions with regard to the Bryant-Bruces' child. It asserted immunity not only with regard to their initial investigation of the case and their filing of the dependency and neglect petition, but also with regard to their actions concerning the child's care while he was in foster care.

The order dismissing the Bryant-Bruces' claim reflects that the Commission distinguished between the Department's initial investigation of the case and its filing of the dependent and neglect proceeding and the Department's conduct after the Bryant-Bruces' child was placed in foster care.<sup>4</sup> The Commission determined that the Department was "justified in relying on Vanderbilt" with regard to the investigation and filing of the dependent and neglect petition. Accordingly, the Commission concluded that "during the investigative stage, before judicial immunity took effect, DHS did not commit malpractice and was not guilty of negligent care, custody, and control."

The Commission took a different view of the Department's actions after the juvenile court placed the Bryant-Bruces' child in its custody. The Commission observed that it "feels that DHS ought to have been suspicious of how well Vanderbilt was treating the child, especially over the period of time that the child was getting much sicker and even dying" and that it "feels that the parent should have been given a bigger say-so in how the child was treated." However, despite these

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<sup>4</sup> As the Commission noted, "[t]he Commission sees two questions under this [the quasi-judicial immunity] issue. The first is whether the Department of Human Services . . . rightfully took custody of Baby Gregory on the basis of what the Vanderbilt physicians told them and the second question is whether they carried out that custody correctly, or should have yielded it sooner."

concerns, the Commission determined that it was required to dismiss the Bryant-Bruces' claim under Tenn. Code Ann. § 9-8-307(a)(1)(E) because the Department and its employees were entitled to quasi-judicial immunity based on *Rippy v. Hattaway*, 270 F.3d 416 (6th Cir. 2001) and *Salyer v. Patrick*, 874 F.2d 374 (6th Cir. 1989).<sup>5</sup>

## B.

Immunity claims must be analyzed in light of the functions performed by the person seeking immunity. *Burns v. Reed*, 500 U.S. 478, 486, 111 S. Ct. 1934, 1939 (1991). To be entitled to immunity, the actions of the person seeking immunity must be closely related to the justifying purposes behind the particular immunity doctrine being invoked. *Nixon v. Fitzgerald*, 457 U.S. 731, 755, 102 S. Ct. 2690, 2704 (1982).

Several varieties of immunity arise in the context of judicial proceedings. Judges are absolutely immune from suit for the acts performed in the exercise of their judicial functions. *Webb v. Fisher*, 109 Tenn. 701, 705, 72 S.W. 110, 111 (1903); *Mercer v. HCA Health Servs. of Tenn., Inc.*, 87 S.W.3d 500, 503-04 (Tenn. Ct. App. 2002). Absolute judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435, 113 S. Ct. 2167, 2171 (1993).

Over the years, a form of immunity similar to absolute judicial immunity has been extended to persons other than judges. The immunity, commonly referred to as quasi-judicial immunity, applies to persons who are not judges but whose functions are an integral part of or intimately related to the judicial process. These functions must be absolutely necessary to the proper functioning of the judicial process, *Mercer v. HCA Health Servs. of Tenn., Inc.*, 87 S.W.3d at 504, and immunity for persons performing these functions arises only when the danger that they will be distracted from the performance of their duties is very great. *Forrester v. White*, 484 U.S. 219, 230, 108 S. Ct. 538, 545 (1988). Recognizing the possibility that disappointed litigants will vent their wrath on auxiliary court personnel, *Scruggs v. Moellering*, 870 F.2d 376, 377 (7th Cir. 1989), quasi-judicial immunity has been extended to persons performing functions integral to the judicial process or acting at the court's direction, such as clerks,<sup>6</sup> guardians ad litem,<sup>7</sup> CASA volunteers,<sup>8</sup> and mediators.<sup>9</sup>

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<sup>5</sup>The Commission observed that it "does not like" the *Rippy v. Hattaway* and *Salyer v. Patrick* decisions but that "the Sixth Circuit has made its intentions known, and the Commission is bound by them whether it likes it or not."

<sup>6</sup>*Slate v. State*, No. M1998-00434-COA-R3-CV, 1999 WL 1128854, at \*3 (Tenn. Ct. App. Dec. 10, 1999), *perm. app. denied* (Tenn. Apr. 10, 2000); *Miller v. Niblack*, 942 S.W.2d 533, 537 (Tenn. Ct. App. 1996).

<sup>7</sup>*Winchester v. Little*, 996 S.W.2d 818, 826-27 (Tenn. Ct. App. 1998).

<sup>8</sup>*Foster v. Washoe County*, 964 P.2d 788, 793 (Nev. 1998).

<sup>9</sup>*Wagshal v. Foster*, 28 F.3d 1249, 1254 (D.C. Cir. 1994); *Howard v. Drapkin*, 271 Cal. Rptr. 893, 902 (Ct. App. 1990); *Lythgoe v. Guinn*, 884 P.2d 1085, 1088 (Alaska 1994).

The same policy considerations behind the doctrine of absolute judicial immunity gave rise to prosecutorial immunity. These considerations include the concern that harassment by unfounded litigation would divert a prosecutor's time and attention from his or her official duties and would create the possibility that the prosecutor would shade his or her decisions instead of exercising independence of judgment required by the public trust. *Imbler v. Pachtman*, 424 U.S. 409, 423-24, 96 S. Ct. 984, 991-92 (1976); *Davis v. Weatherford*, No. 01A01-9903-CV-00159, 1999 WL 969648, at \*6 (Tenn. Ct. App. Oct. 26, 1999), *perm. app. denied* (Tenn. Feb. 14, 2000). Absolute prosecutorial immunity is justified "only for actions that are connected with the prosecutor's role in the judicial proceedings," *Burns v. Reed*, 500 U.S. at 485, 111 S. Ct. at 1938-39, that is, only when the challenged acts were performed while the prosecutor was serving as an advocate in a legal proceeding. *Kalina v. Fletcher*, 522 U.S. 118, 125-26, 118 S. Ct. 502, 507 (1997).

### C.

The party claiming absolute immunity bears the burden of establishing the justification for the claim. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. at 432, 113 S. Ct. at 2169; *Burns v. Reed*, 500 U.S. at 486, 111 S. Ct. at 1939. Accordingly, the Department had the burden of demonstrating that it is entitled to absolute quasi-judicial immunity with regard to the Bryant-Bruces' claim that its employees negligently failed to provide proper supervision over the medical care VUMC provided to their child while he was in foster care.

Social workers such as the Department's employees named in the Bryant-Bruces' claim have received absolute immunity for certain functions in dependent and neglect proceedings. They have received quasi-prosecutorial immunity when they were acting as legal advocates by initiating legal proceedings or testifying in court. *Doe v. Lebbos*, 348 F.3d 820, 826 (9th Cir. 2003); *Holloway v. Brush*, 220 F.3d 767, 775 (6th Cir. 2000); *Salyer v. Patrick*, 874 F.2d 374, 377-78 (6th Cir. 1989); *Malachowski v. City of Keene*, 787 F.2d 704, 712 (1st Cir. 1986). They have also received quasi-judicial immunity for their execution of a court order, *Caldwell v. LeFaver*, 928 F.2d 331, 333 (9th Cir. 1991), or for completing plans of care that must eventually be reviewed and approved by the courts. *Rippy v. Hattaway*, 270 F.3d at 423. If no immunity were provided for these functions, social workers, like prosecutors, would not be able to exercise their independent judgment in dependency and neglect proceedings without fear of a financially devastating civil suit. *Meyers v. Contra Costa County Dept of Soc. Servs.*, 812 F.2d 1154, 1157 (9th Cir. 1986).

We have determined that the Department's reliance on quasi-judicial immunity is misplaced for two reasons. The first reason is that the doctrine of quasi-judicial immunity, as it is commonly understood, does not apply to the conduct giving rise to the Bryant-Bruces' claim. The provision of medical care to a child in state custody has no direct connection with the proper and efficient operation of the judicial system. While the provision of medical care could conceivably have some indirect relation to the operation of the judicial system in circumstances where a court has ordered that specific medical services be provided, the record in this case contains no indication that the medical treatment that the Bryant-Bruces' child was receiving at VUMC was being rendered pursuant to a court order.



The second reason for declining to extend absolute immunity to the Department is that doing so would be inconsistent with the express purpose of the Tennessee General Assembly when it waived the State's sovereign immunity in 1984.<sup>10</sup> Recognizing that the strict application of the doctrine of sovereign immunity could cause "inherently unfair and inequitable results" and that the State "should be responsible for the actions of its employees when they are performing their official duties," the General Assembly provided in Tenn. Code Ann. § 9-8-307(a)(1)(E) that the State could be held liable for damages caused by the "[n]egligent care, custody and control of persons" by state employees acting within the scope of their official duties.

The State, in its role as *parens patriae*, has a special duty to protect minors. *Hawk v. Hawk*, 855 S.W.2d 573, 580 (Tenn. 1993); *Lee v. Lee*, 66 S.W.3d 837, 847 (Tenn. Ct. App. 2001); *Worley v. State, Dep't of Children's Servs.*, No. 03A01-9708-JV-00366, 1998 WL 52098, at \* 1 (Tenn. Ct. App. Feb. 10, 1998) (No Tenn. R. App. P. 11 application filed). This duty continues when the State removes a child from his or her parents' custody and assumes direct responsibility for the care of a child pursuant to court order. See *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 170 (Tenn. 1996). Once the Department is awarded custody of a child, it has a duty to see to it that the child's health care needs are met and that all other services required by law to which the child is entitled are reasonably provided. See Tenn. Code Ann. § 37-5-102(4) (2001); Tenn. Code Ann. § 37-5-102(2) (Supp. 2004).

Adopting the Department's interpretation of the scope of quasi-judicial immunity would eviscerate its statutory and moral obligation to take reasonable steps to assure that children placed in its custody at its own request receive adequate medical care. Once the Department has sought and obtained custody of a child, it takes on the responsibility to make sure that the child receives adequate medical care and to discharge this responsibility in a reasonable manner. When the Department acts negligently in caring for children placed in its custody (i.e., when it fails to discharge its obligation to provide reasonable medical care), it is subject to a claim for damages under Tenn. Code Ann. § 9-8-307(a)(1)(E).

The Department failed to carry its burden of demonstrating that it is entitled to quasi-judicial immunity with regard to the manner in which it monitored the provision of medical care to the Bryant-Bruces' child while he was in foster care. Accordingly, the Commission erred by dismissing the Bryant-Bruces' claim on the ground that the Department had quasi-judicial immunity.

#### IV.

Our conclusion that the Department is not entitled to quasi-judicial immunity from liability with regard to the Bryant-Bruces' Tenn. Code Ann. § 9-8-307(a)(1)(E) claim does not end our consideration of this case. The Department has also asserted other grounds supporting the Commissioner's dismissal of the Bryant-Bruces' claim. While many of the Department's arguments

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<sup>10</sup> Act of May 24, 1984, ch. 972, 1984 Tenn. Pub. Acts 1026.

lack merit,<sup>11</sup> we have determined that the Bryant-Bruces' claim was properly dismissed on summary judgment for one simple reason. Based on the undisputed facts in the record before the Commission, reasonable persons can reach only one conclusion – the Department and its employees did not act negligently by deferring to VUMC's diagnosis and treatment of the Bryant-Bruces' child while he was in the Department's custody.

In negligence cases, determinations involving the existence and extent of one's duty to prevent harm to others is a question of law for the courts. *West v. East Tenn. Pioneer Oil Co.*, \_\_\_ S.W.3d \_\_\_, \_\_\_, 2005 WL 1981883, at \*4 (Tenn. Aug. 18, 2005); *Hale v. Ostrow*, 166 S.W.3d 713, 716 (Tenn. 2005); *Rains v. Bend of the River*, 124 S.W.3d 580, 588 (Tenn. Ct. App. 2003). In this case, the Department had the duty to act reasonably to assure that the Bryant-Bruces' child received appropriate medical care after the Montgomery County Juvenile Court placed the child in the Department's custody. To the extent that the Department was directly involved in selecting health care providers for the child, it had a duty to use reasonable care to select health care providers who were competent and equipped to provide the necessary care. If the Department delegated the responsibility to select the child's health care providers to others, then it had a duty to make sure that the persons making the child's health care decisions were capable of making reasonable, informed decisions.

Evidence of an injury is not, by itself, sufficient to prove that the injury was caused by someone's negligence. *Seavers v. Methodist Med. Ctr.*, 9 S.W.3d 86 at 91; Tenn. Code Ann. § 29-26-115(d) (Supp. 2004). Thus, the fact that the Bryant-Bruces' child was on a steadily downhill course while being treated by VUMC does not necessarily indicate that VUMC's medical care was inadequate. Lay persons such as the Department's employees cannot be held to the standard of second-guessing the diagnosis or treatment decisions of otherwise qualified health care providers simply because the treatment being provided is not restoring the patient to health.

The fact that Dr. Bryant-Bruce was voicing concerns about the adequacy of VUMC's diagnosis and treatment of her child does not alter this result. The Department's employees were receiving conflicting information. On one hand, Dr. Bryant-Bruce, a mother who had lost custody of her child because of a diagnosis of Shaken Infant Syndrome, was insisting that VUMC's staff had misdiagnosed her child's illness and was providing substandard care. On the other hand, the VUMC

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<sup>11</sup>For example, the Department continues to insist that it is not liable for the conduct of the foster parents. That very well may be the case; however, the Bryant-Bruces' Tenn. Code Ann. § 9-8-307(a)(1)(E) claim is premised on the Department's acts, not the foster parents' acts. The Department also invokes "collateral" estoppel based on the United States District Court's finding that VUMC was not negligent in its diagnosis or treatment of the Bryant-Bruces' child. The doctrine of collateral estoppel is inapplicable because the claims that the Bryant-Bruces seek to raise here could not have been raised in the federal proceedings because they had been waived under Tenn. Code Ann. § 9-8-307(b). Likewise, the Department's "discretionary function immunity" claim is without merit because the State does not have discretionary function immunity. *Lucas v. State*, 141 S.W.3d 121, 128-30 (Tenn. Ct. App. 2004). Finally, the Department's claim that the Bryant-Bruces were more at fault as a matter of law is not well-taken for two reasons. First, the task of allocating fault is peculiarly within the province of the trier-of-fact. *Brown v. Wal-Mart Discount Cities*, 12 S.W.3d 785, 789 (Tenn. 2000); *Prince v. St. Thomas Hosp.*, 945 S.W.2d 731, 735 (Tenn. Ct. App. 1996). The courts may allocate fault on summary judgment only when reasonable persons would reach a single conclusion. In light of the fact that the Bryant-Bruces' child was in the Department's custody, it is unlikely that any reasonable person would conclude that the Bryant-Bruces were more responsible for his medical care than the Department.

physicians, aware of Dr. Bryant-Bruce's complaints, were adhering to their diagnosis and treatment plan. The record contains no independent expert evidence that VUMC breached the applicable standard of professional practice in diagnosing and treating the child. To the contrary, the record indicates that the Bryant-Bruces' medical malpractice claims against VUMC were dismissed on summary judgment.

Based on the undisputed facts, lay persons such as the Department's employees were not required to second-guess the diagnosis or treatment decisions of the health care providers at VUMC. Therefore, based on our analysis of the duty imposed by law on the Department and its employees in this case, we have concluded that reasonable persons can reach only one conclusion – the Department and its employees were not acting negligently when they accepted and relied upon VUMC's diagnosis and treatment decision of the Bryant-Bruces' child. They were not required to obtain a second medical opinion or subject the child to further testing simply because Dr. Bryant-Bruce disagreed with the VUMC staff.<sup>12</sup>

## V.

Even though we have determined that the Commission relied on erroneous reasoning when it dismissed the Bryant-Bruces' claim under Tenn. Code Ann. § 9-8-307(a)(1)(E), we have determined that the Commission reached the correct result.<sup>13</sup> Accordingly, we affirm the dismissal of the Bryant-Bruces' claim and remand the case to the Commission for whatever further proceedings may be required. We tax the costs of this appeal jointly and severally to Gregory David Bryant-Bruce, Sr. and Cheryl Bryant-Bruce and their surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.

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<sup>12</sup>We recognize that our conclusion differs from the Commission's conclusion that "DHS ought to have been suspicious about how well Vanderbilt was treating the child especially over the time that the child was getting much sicker and even dying." However, this comment reflects a legal rather than a factual disagreement. The Commission concluded that the Department had a duty to second-guess VUMC's diagnosis and treatment because the health of the Bryant-Bruce's child was not improving. We have determined that the law does not impose this duty on persons such as the Department's employees in this case.

<sup>13</sup>The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial court when the trial court reached the correct result. *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999); *Allen v. National Bank of Newport*, 839 S.W.2d 763, 765 (Tenn. Ct. App. 1992); *Clark v. Metropolitan Gov't*, 827 S.W.2d 312, 317 (Tenn. Ct. App. 1991).